



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

General
Outgoing
a

November 17, 2008

John Schaff, Legislative Auditor General
Office of the Legislative Auditor General
315 House Building
Utah State Capitol Complex
Salt Lake City, Utah 84114-5315

Subject: December 2007 Legislative Audit of the Division's Coal Regulatory Program

Dear Mr. Schaff:

As requested by your letter to me dated November 3, 2008, I am enclosing several documents describing the activities of the Division of Oil, Gas and Mining relative to the December 2007 legislative audit of the Division's Coal Regulatory Program. I believe that as a division, we have made excellent progress in addressing the various recommendations provided in the audit report, and I welcome the opportunity to follow up with you or any of the legislative audit staff to explain our current situation in greater detail.

Included with this letter is the completed table as requested in your November 3rd letter. Other accompanying documents include:

- Tabular chronology of events describing the Division's response to the audit
- Copy of presentation at May 29, 2008 public meeting in Castledale
- Copy of presentation at October 16, 2008 BLM Coal Symposium in Helper
- Copy of DOGM letter dated October 29, 2008 sent to the Utah Mining Association
- Side-by-side comparison of coal fees proposals
- Revised DOGM internal Technical Directive 005

In addition to the numerous meetings and actions taken specific to the recommendations of the audit, some of the changes within DOGM since the audit include personnel changes within the mining group of DOGM and the Coal Regulatory Program, summarized as follows:

- Dana Dean, P.E. as the Associate Director for Mining in April 2008
- Daron Haddock as the Coal Program Permit Supervisor in February 2008
- Jim Smith as a Lead Staff Member in the Coal Program in February 2008 - sharing certain management duties with Mr. Haddock
- Staffing of the Coal Regulatory Program reduced to 18 FTEs as of July 2008

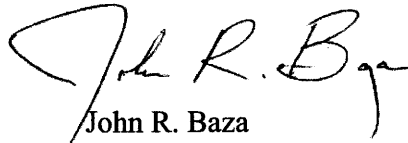


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John Schaff
November 17, 2008

Because of these actions taken and several other philosophical adjustments made in DOGM since the legislative audit, I feel that the Division's Coal Regulatory Program has made great progress in becoming more efficient and more effective in achieving the intents of legislature for this state government program. I believe that if your staff were to review our efforts at this time, they would find a very much improved and very different organization than they observed during calendar year 2007.

Thank you for your professionalism and courtesy in helping us to improve our operations. Please contact me for any additional information that you may require.

Sincerely,



John R. Baza
Director

an
Enclosure
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**Audit Follow-up:
A Performance Audit of Coal & Mining Regulatory Program
(Number 2007-15)**

Recommendations

Reported Actions

Chapter II:

Status: Implemented

1. We recommend that division management follow *Utah Administrative Rule R645-303-221*, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed.

- Assigned staff lead workers for specific mines, who are responsible for all ICRs for their mines
- Implemented required ICR procedures beginning in Dec. 2007
- 83% of ICRs completed on time since then (72 out of 87)

2. We recommend that division management adhere to required mandated deadlines and deny permit amendments that are incomplete.

Status: Implemented

- If a mine permit application is deficient, the entire document is returned to the applicant with a detailed deficiency list – eliminating confusion and saving time when reviews are iterative
- Timeliness has improved (with small delays in certain cases due to personnel changes)
- Staff have been instructed to accomplish tasks well in advance of statutory due dates in order to avoid deadline crunches
- Moving toward a more project management based approach

Recommendations

3. We recommend that division management create a complete policy with water monitoring. This policy should contain procedures that will help ensure water-monitoring reports are timely reviewed. The division also needs to communicate with the coal operators on any deficiencies that are generated from the water reports within a specific time frame.
4. We recommend that division management create a policy and procedures for emergency permit approvals. The policy should specify a sufficient documentation level that can demonstrate the division's decision as not being arbitrary and capricious.
5. We recommend that division management create a policy and develop procedures to ensure annual reports are completed in a timely manner.

Reported Actions

Status: Partially implemented

- We have revised internal Technical Directive 005 to state that the division has 90 days to review data
- We need a small amount of further clarification to Tech 005 to ensure consistency in reviews

Status: Implemented

- The following concepts have been discussed with staff:
- "Emergency" – threat to human health and safety – we have stepped back in such cases (e.g. Crandall Canyon) until the threat is over
- "Expedited" – obviously, everyone wants their permit now – new method of assigning due dates should help to achieve timeliness without sacrificing conscientious analysis

Status: Implemented

- Completeness of Annual Reports now checked by inspectors during complete inspections in 3rd quarter (all required actions have been completed for the current year)
- Any reports that need further review are assigned as a separate task due by the end of the 4th quarter

Recommendations

6. We recommend that division management utilize the CTS program or develop a similar management information system. Division management should carefully evaluate options that ensure technical IT staff make the necessary changes to the coal tracking system (or a similar system) to ensure that management has the capability to track the status of required tasks and functions. Other items that should be included into the system are:

- Reports detailing workload analysis
- Priority rankings of projects
- Automated calculation of due dates and a function that automatically monitors deadlines

7. We recommend that division management include in the Governor=s Balanced Scorecard all key performance indicators that can be measured to help the division better evaluate their overall performance.

Reported Actions

Status: Implemented

- There is now automatic calculation of IR and statutory due dates
- Coal managers are using the CTS to prioritize tasks
- There is now consistent input to the CTS that has improved the quality of the database

Status: Implemented

- Have started to include all midterm reviews, water monitoring reports, permit renewals, etc. in timeliness numbers
- Programming CTS to automatically calculate report numbers

Recommendations

Reported Actions

Chapter III:

1. We recommend that DOGM conform its interpretation of the permit area to the definition adopted by the federal Office of Surface Mining and clarified by the Board of Oil, Gas and Mining. If the division believes that the current interpretation of the rules does not adequately protect environmental resources then it should seek clarification from the Legislature and/or the Board of Oil, Gas and Mining.

Status: Implemented

- Permittee may change permit area to include only the disturbed area
- Division will retain only those regulatory requirements related to subsidence or baseline data required in the “adjacent” areas
- No one has made the change so far

Chapter IV:

1. We recommend that division management ensure the *Utah Administrative Rules* are being consistently enforced as clarified by the Board of Oil, Gas and Mining and adopted by the federal Office of Surface Mining. If division management believe the rules need to be revised to better ensure the protection of environmental resources or public safety, then they should seek the appropriate approval from the Legislature and/or the Board of Oil, Gas and Mining.

Status: Implemented

- Coal managers are ensuring that the rules are being applied correctly, fairly and consistently – there have been no further incidences such as those cited in the audit
- Invite permittees to call division management if they feel they not being treated fairly
- Informal conference requests or appeals to the Board are also options to address grievances – two such informal conference were conducted in the past two months
- No rule revisions by the Board are currently contemplated, but ongoing rulemaking analysis by staff will identify any areas that may need such action

Recommendations

Reported Actions

Chapter V:

1. We recommend that DOGM utilize the following two approaches when requesting federal funding in the future.

- § Request the Office of Surface Mining (OSM) change the area-weighted average formula to include disturbed and adjacent areas.
- § Request federal funding based on the workload option.

2. We recommend that DOGM devise a fee structure and present it to the Legislature for their consideration.

Status: Not yet implemented

- Because no operator has applied for a change to their permit area, the 2009 Grant Application was submitted based on the current formula
- We have changed our timesheet tracking to include mine codes in preparation for a future workload option application
- We would be the first state to use the workload option, thus there is no existing model to follow and we must carefully analyze the best way to implement
- If it appears that future federal grants may be affected by the current area-weighted formula, then DOGM will pursue modification during an upcoming grant application cycle

Status: Not yet implemented

- Division analysis indicates that a more reasonable fee structure than that suggested in the audit is appropriate:
- \$6000 for new permits, \$8000 per year for active operations, and \$4000 per year for inactive operations
- On August 14, 2008, we informed the Natural Resources Appropriations Committee of our intent to request an approved fee structure
- We will formally present our proposal during the 2009 Legislative General Session

Utah Division of Oil, Gas and Mining

Public meeting regarding legislative audit
of DOGM's Coal Regulatory Program
May 29, 2008

Introductions

John Baza, Director
Paula Dupin Zahn, Financial Manager
Steve Schneider, Admin. Services/Policy
Coordinator
Dana Dean, Associate Director of Mining
Daron Haddock, Coal Program Manager
Jim Smith, Coal Program Manager
Steve Alder, Assistant AG

Legislative Audit History

- June 1, 2007 – Audit letter to DOGM
- July – October, 2007 – Audit meetings w/ DOGM
- Dec. 18, 2007 – Audit report to legislature
- Dec. 19, 2007 – Initial DOGM management/staff discussion of audit report
- January 8, 2008 – Initial DOGM/coal operator discussion of audit report

History

- January – April, 2008 – Multiple coal operator joint meetings and internal DOGM meetings discussing audit response
- May 29, 2008 – Public meeting to discuss audit response

Audit recommendation #1

We recommend that division management follow Utah Administrative Rule R645-303-221, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed.

Audit recommendation #2

We recommend that division management adhere to required mandated deadlines and deny permit amendments that are not complete.

Audit recommendation #3

We recommend that division management create a complete policy with water monitoring. This policy should contain procedures that will help ensure water monitoring reports are timely reviewed. The division also needs to communicate with the coal operators on any deficiencies that are generated from the water reports within a specific time frame.

Audit recommendation #4

We recommend that division management create a policy and procedures for emergency permit approvals. The policy should specify a sufficient documentation level that can demonstrate the division's decision as not being arbitrary and capricious.

Audit recommendation #5

We recommend that division management create a policy and develop procedures to ensure annual reports are completed in a timely manner.

Audit recommendation #6

We recommend that division management utilize the CTS program or develop a similar management information system. Division management should carefully evaluate options that ensure technical IT staff make the necessary changes to the CTS (or a similar system) to ensure that management has the capability to track the status of required tasks and functions.

Audit recommendation #7

We recommend that division management include in the Governor's Balanced Scorecard all key performance indicators that can be measured to help the division better evaluate their overall performance.

Audit recommendation #8

We recommend that DOGM conform its interpretation of the permit area to the definition adopted by the federal Office of Surface Mining and clarified by the Board of Oil, Gas and Mining. If the division believes that the current interpretation of the rules does not adequately protect environmental resources then it should seek clarification from the Legislature and/or the Board of Oil, Gas and Mining.

Audit recommendation #9

We recommend that division management ensure the Utah Administrative Rules are being consistently enforced as clarified by the Board of Oil, Gas and Mining and adopted by the federal Office of Surface Mining. If division management believes the rules need to be revised to better ensure the protection of environmental resources or public safety, then they should seek the appropriate approval from the Legislature and/or the Board of Oil, Gas and Mining.

Audit recommendation #10

We recommend that DOGM utilize the following two approaches when requesting federal funding in the future:

- Request the Office of Surface Mining change the area-weighted average formula to include disturbed and adjacent areas.
- Request federal funding based on the workload option.

Audit recommendation #11

We recommend that DOGM devise a fee structure and present it to the Legislature for their consideration.

Audit report website

http://www.le.state.ut.us/audit/ad_2007dl.htm



Utah Division of Oil, Gas and Mining Coal Regulatory Program Status

Presented by John R. Baza, Director
at the
Utah Coal Symposium

October 16, 2008



Mission of the Coal Regulatory Program

- ✓ Support the existence of a viable coal mining industry to meet the nation's energy needs
- ✓ Implement standards that safeguard the environment and protect the public health and safety
- ✓ Achieve the successful reclamation of land affected by coal mining activities

(see SMCR A and UCA 40-10)



Personnel/Staffing Changes

- ✓ Coal staff down from 23 FTE's to 18
- ✓ Lost: 2 Hydrologists, 1 Engineer, 1 Permit Supervisor, 1 Biologist
- ✓ Contracted:
 - April Abate (Hydrologist)
 - Ingrid Wieser (Biologist - Nov. 17)
 - Suzanne Steab (Office Specialist)



2007 Legislative Audit

- ✓ Auditor's report to the Legislature December 18, 2007
- ✓ Eleven recommendations
- ✓ Response immediate and effective in many cases, some changes will take time to fully implement and see benefits



Audit Recommendation 1

We recommend that division management follow *Utah Administrative Rule R645-303-221*, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed

- ✓ Assigned mine leads, who are responsible for all ICRs for their mines.
- ✓ Implemented ICR in Dec. 2007
- ✓ 83% of ICRs completed on time since then (72/87)



Audit Recommendation 2

We recommend that division management adhere to required mandated deadlines and deny permit amendments that are incomplete.

- ✓ If a permit is deficient, the whole thing is returned with a deficiency list
 - Eliminates confusion and saves time when reviews are iterative
- ✓ Timeliness has improved (some bumps in the road with personnel changes)
 - No longer just assigning due dates based on statutory limits
 - Moving toward a more project management based approach
 - If a project will take 1-2 hours to complete, why make it due 60 days out?



Audit Recommendation 3

We recommend that division management create a **complete** policy with water monitoring. This policy should contain procedures that will help ensure water-monitoring reports are timely reviewed. The division also needs to communicate with the coal operators on any deficiencies that are generated from the water reports within a specific time frame.

- ✓ Clarified Tech Directive 005 to state the Division has 90 days to review data
- ✓ Working toward timeliness and efficiency in light of other permitting work
- ✓ Need to clarify Tech 005 further to ensure consistency in reviews



Audit Recommendation 4

We recommend that division management create a policy and procedures for emergency permit approvals. The policy should specify a sufficient documentation level that can demonstrate the division's decision as not being arbitrary and capricious.

- ✓ "Emergency" = threat to life and limb - we have stepped back in such cases (Crandall) until the threat is over
- ✓ "Expedited" - everyone wants their project now!
- New method of assigning due dates should help



Audit Recommendation 5

We recommend that division management create a policy and develop procedures to ensure annual reports are completed in a timely manner.

- ✓ Completeness of Annual Reports now checked by inspectors during complete inspection in 3rd quarter (all done this year)
- ✓ Any reports that need further review are assigned as a separate task due by the end of the 4th quarter



Audit Recommendation 6

We recommend that division management utilize the CTS ... to track the status of required tasks and functions.

- ✓ Automatic calculation of IR and statutory due dates
- ✓ Coal Managers using the CTS to prioritize tasks
- ✓ Consistent input to the CTS has improved the quality of the database



Audit Recommendation 7

We recommend that division management include in the Governor's Balanced Scorecard all key performance indicators that can be measured to help the division better evaluate their overall performance.

- ✓ Have started to include all midterm reviews, water monitoring reports, permit renewals, etc. in timeliness numbers
- ✓ Programming CTS to automatically calculate report numbers



Audit Recommendation 8

We recommend that DOGM conform its interpretation of the permit area to the definition adopted by the federal Office of Surface Mining and clarified by the BOGIM. If the division believes that the current interpretation of the rules does not adequately protect environmental resources then it should seek clarification from the legislature and/or BOGIM.

- ✓ Permittee may change permit area to include only the disturbed area
- ✓ Will not change requirements related to subsidence or baseline data required in the "adjacent" areas
- ✓ No one has made the change so far



Audit Recommendation 9

We recommend that division management ensure the *Utah Administrative Rules* are being consistently enforced as clarified by the Board of Oil, Gas and Mining and adopted by the federal Office of Surface Mining. If division management believe the rules need to be revised to better ensure the protection of environmental resources or public safety, then they should seek the appropriate approval from the Legislature and/or the Board of Oil, Gas and Mining.

- ✓ Coal Managers are ensuring that the Rules are not being applied incorrectly, unfairly, or inconsistently – There have been no further instances such as those cited in the audit
- ✓ Invite Permittees to call DOGM Mgmt. if they feel they are not being treated fairly
- ✓ Informal conference/appeal to Board also an option



Audit Recommendation 10

We recommend that DOGM utilize the following two approaches when requesting federal funding in the future. Request the Office of Surface Mining (OSM) change the area-weighted average formula to include disturbed and adjacent areas. Request federal funding based on the workload option.

- ✓ Permit areas have not changed, 2009 Grant Application based on old formula
- ✓ Changed timesheets to include mine codes in preparation for workload option
- ✓ Would be the first State to use the workload option, analyzing best way to implement



Audit Recommendation 11

We recommend that DOGM devise a fee structure and present it to the Legislature for their consideration.

- ✓ Flat yearly fee (\$6k new permit, \$8k active operation, \$4k inactive operation)
- ✓ Informed NR Appropriations Committee August 14
- ✓ Will formally present during 2009 General Session



JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

October 29, 2008

David Litvin, President
Utah Mining Association
136 South Main St., Suite 709
Salt Lake City, UT 84101

Dear Mr. Litvin:

The Division of Oil Gas and Mining would like to formally advise you and your membership of the status of our Coal Regulatory Program as a result of the December 2007 Legislative Audit. We have previously shared this information informally with coal operators, in a public meeting in Castle Dale on May 29th of this year, and in the recent BLM Coal Symposium held at the WETC facility near Helper.

I have attached for your information a table of the main recommendations provided in the Legislative Audit, and also summarizing the Division's actions related to each recommendation. Although all of the recommendations were addressed with equal emphasis by the Division, I wish to highlight with this letter two of the recommendations in which coal operators expressed significant interest.

Regarding Recommendation #8: For a number of years the Division has interpreted the "Permit Area" of a coal mine to include the surface "Disturbed Area," and all underground workings. In response to this recommendation from the Legislative Audit, the Division has concluded that this interpretation should not be mandatory. A coal mine may choose to continue the practice of including underground workings in the "Permit Area," or may choose to define the "Permit Area" as just the surface "Disturbed Area." This will not change the requirements for pre-subsidence surveys, subsidence control and monitoring, repair of subsidence damage to surface lands; the collection of baseline and operational hydrologic data; or any other requirements related to protection of the "Adjacent Area," "Affected Area," or "Cumulative Impact Area." The change may be proposed as an amendment to existing mine plans at any time, and newly proposed mines may choose to adopt either interpretation.

Regarding Recommendation #11: The Division has pursued the recommendation to devise a fee structure and present it to the Legislature for their consideration. At the May 29th meeting in Castledale, the Division presented its proposal of fees as a side-by-side comparison (see attached table) with the potential fees suggested in the Legislative Audit.

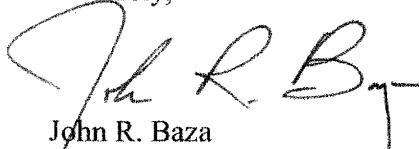


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David Litvin
October 29, 2008

As you were present at that meeting, you may recall that there was mixed reaction by the coal operators regarding the fee proposal. Since that meeting, the Division has received no further comment, either positive or negative concerning coal fees. The Division informed the Natural Resources Appropriations Committee on August 14, 2008 of the fee proposal, and the Division must formally present the fee structure to the Legislature during the 2009 General Session in order to receive approval for implementation. Additionally, a bill file has been opened to clarify the coal program statute concerning fees, and the Natural Resources Interim is expected to hear this matter on November 19th.

I welcome comment from your organization concerning the Coal Regulatory Program, or the actions of the Division following the Legislative Audit. If you have any questions, please feel free to call me at (801) 538-5334 or Dana Dean at (801) 538-5320.

Sincerely,



John R. Baza
Director

JRB/DD/vs

cc:

Mike Styler
Steve Scheider
Dana Dean

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**Eleven audit recommendations for the Utah Coal Regulatory Program
December 18, 2007**

Recommendation	Status
1. We recommend that division management follow <i>Utah Administrative Rule</i> R645-303-221, and complete a 15-day initial completeness review on all relevant permit changes. Management should track and monitor the 15-day review (ICR) to ensure that it is consistently completed.	<ul style="list-style-type: none"> Assigned mine leads, who are responsible for all ICRs for their mines Implemented ICR procedures in Dec. 2007 83% of ICRs completed on time since then (72 out of 87)
2. We recommend that division management adhere to required mandated deadlines and deny permit amendments that are incomplete.	<ul style="list-style-type: none"> If a permit is deficient, the whole thing is returned with a deficiency list – eliminates confusion and saves time when reviews are iterative Timeliness has improved (with some bumps in the road due to personnel changes) Task due dates not based solely on statutory limits Moving toward a more project management based approach
3. We recommend that division management create a complete policy with water monitoring. This policy should contain procedures that will help ensure water-monitoring reports are timely reviewed. The division also needs to communicate with the coal operators on any deficiencies that are generated from the water reports within a specific time frame.	<ul style="list-style-type: none"> Revised Tech Directive 005 to state that the division has 90 days to review data Need further clarification to Tech 005 to ensure consistency in reviews
4. We recommend that division management create a policy and procedures for emergency permit approvals. The policy should specify a sufficient documentation level that can demonstrate the division's decision as not being arbitrary and capricious.	<ul style="list-style-type: none"> "Emergency" – threat to human health and safety – we have stepped back in such cases (e.g. Crandall Canyon) until the threat is over "Expedited" – everyone wants their permit now! – new method of assigning due dates should help
5. We recommend that division management create a policy and develop procedures to ensure annual reports are completed in a timely manner.	<ul style="list-style-type: none"> Completeness of Annual Reports now checked by inspectors during complete inspections in 3rd quarter (all done for the current year)

	<ul style="list-style-type: none"> Any reports that need further review are assigned as a separate task due by the end of the 4th quarter
<p>6. We recommend that division management utilize the CTS program or develop a similar management information system. Division management should carefully evaluate options that ensure technical IT staff make the necessary changes to the coal tracking system (or a similar system) to ensure that management has the capability to track the status of required tasks and functions. Other items that should be included into the CTS system are:</p> <ul style="list-style-type: none"> Reports detailing workload analysis Priority rankings of projects <p>Automated calculation of due dates and a function that automatically monitors deadlines.</p>	<ul style="list-style-type: none"> Automatic calculation of IR and statutory due dates Coal managers using the CTS to prioritize tasks Consistent input to the CTS has improved the quality of the database
<p>7. We recommend that division management include in the Governor's Balanced Scorecard all key performance indicators that can be measured to help the division better evaluate their overall performance.</p>	<ul style="list-style-type: none"> Have started to include all midterm reviews, water monitoring reports, permit renewals, etc. in timeliness numbers Programming CTS to automatically calculate report numbers
<p>8. We recommend that DOGM conform its interpretation of the permit area to the definition adopted by the federal Office of Surface Mining and clarified by the Board of Oil, Gas and Mining. If the division believes that the current interpretation of the rules does not adequately protect environmental resources then it should seek clarification from the Legislature and/or the Board of Oil, Gas and Mining.</p>	<ul style="list-style-type: none"> Permittee may change permit area to include only the disturbed area Division will retain only those regulatory requirements related to subsidence or baseline data required in the "adjacent" areas No one has made the change so far
<p>9. We recommend that division management ensure the <i>Utah Administrative Rules</i> are being consistently enforced as clarified by the Board of Oil, Gas and Mining and adopted by the federal Office of Surface Mining. If division management believe the rules need to be revised to better ensure the protection of environmental resources or public safety, then they should seek the appropriate approval from</p>	<ul style="list-style-type: none"> Coal managers are ensuring that the rules are not being applied incorrectly, unfairly, or inconsistently – there have been no further incidences such as those cited in the audit Permittees are encouraged to call division management if they feel they are not being treated fairly Informal conference requests or appeals to

the Legislature and/or the Board of Oil, Gas and Mining.	the Board are also options to address grievances
<p>10. We recommend that DOGM utilize the following two approaches when requesting federal funding in the future.</p> <ul style="list-style-type: none"> • Request the Office of Surface Mining (OSM) change the area-weighted average formula to include disturbed and adjacent areas. • Request federal funding based on the workload option. 	<ul style="list-style-type: none"> • Because no operator has applied for a change to their permit area, the 2009 Grant Application was submitted based on the current formula • We have changed our timesheet tracking to include mine codes in preparation for a future workload option application • We would be the first state to use the workload option, thus there is no existing model to follow and we must carefully analyze the best way to implement
<p>11. We recommend that DOGM devise a fee structure and present it to the Legislature for their consideration.</p>	<ul style="list-style-type: none"> • Division analysis indicates that a more reasonable fee structure than that suggested in the audit is appropriate: • \$6000 for new permits, \$8000 per year for active operations, and \$4000 per year for inactive operations • On August 14, 2008, we informed the Natural Resources Appropriations Committee of our intent to request an approved fee structure • We will formally present our proposal during the 2009 Legislative General Session

PROPOSED COAL FEES

Legislative Auditor's Recommendation			
Type of Fee	Fee	#	Annual Amount
New Application	\$5,500	0.2	\$1,100
Amendments, Revisions, etc. Minor	\$2,200	84	\$184,800
Amendments, Revisions, etc. Major	\$4,800	31	\$148,800
Annual Fee Producing Mines	\$6,000	10	\$60,000
Annual Fee Non-producing Mines	\$4,000	12	\$48,000
			<u>\$442,700</u>

Oil, Gas and Mining's Recommendation			
Type of Fee	Fee	#	Annual Amount
New Application	\$6,000	0.2	\$1,200
Amendments, Revisions, etc. Minor	\$0	0	\$0
Amendments, Revisions, etc. Major	\$0	0	\$0
Annual Fee Active Mines/Facilities	\$8,000	14	\$112,000
Annual Fee Inactive Mines/Facilities	\$4,000	14	\$56,000
			<u>\$169,200</u>


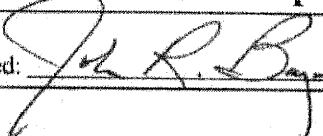
=Fee amount, name or number change from Auditor's Recommendation

PROPOSED COAL FEES

Legislative Auditor's Recommendation			
Type of Fee	Fee	#	Annual Amount
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Amendments, Revisions, etc. Minor	\$2,200	84	\$184,800
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Annual Fee Non-producing Mines	\$4,000	12	\$48,000
			<u>\$442,700</u>

Oil, Gas and Mining's Recommendation			
Type of Fee	Fee	#	Annual Amount
New Application	\$6,000	0.2	\$1,200
Amendments, Revisions, etc. Minor	\$0	0	\$0
Amendments, Revisions, etc. Major	\$0	0	\$0
Annual Fee Active Mines/Facilities	\$8,000	14	\$112,000
Annual Fee Inactive Mines/Facilities	\$4,000	14	\$56,000
			<u>\$169,200</u>

=Fee amount, name or number change from Auditor's Recommendation

 <p>State of Utah Department of Natural Resources Division of Oil, Gas and Mining</p> <p>Coal Regulatory Program Internal Policy</p>	Directive Number: Tech - 005
	Effective Date: February 26, 2008
	Supersedes: July 1, 1997 July 23, 1998 February 22, 2001
Subject: Review and Interpretation of Water Monitoring Data	
Approved:  John Baza, Division of Oil, Gas, and Mining	

DISCLAIMER

"This non-binding policy is intended for internal direction for the Utah Coal Regulatory Program to clarify the implementation of the Utah Coal Rules. It neither confers rights nor imposes obligations on the Division or any other party. In the case where a conflict is perceived to exist between this directive and the Utah Coal Rules, the rules prevail."

ABSTRACT

The Division of Oil, Gas, and Mining's Coal Regulatory Program (the Division) requires all mines to develop a Probable Hydrologic Consequences (PHC) analysis, describing the anticipated impacts that coal mining and reclamation operations will have upon the quality and quantity of surface and groundwater for the proposed permit and adjacent areas. The PHC is based on information gathered from the mine's water monitoring programs and other research and studies. The Division uses the PHC to determine the Probable Cumulative Hydrologic Impacts of all coal mining activities in the general region. The Division analyzes each mine's operational water monitoring data on a quarterly basis to identify any changes to the hydrologic balance near the mine. The operational monitoring is helpful in establishing the presence or absence of mining related changes to the hydrologic balance when compared to the baseline data and the PHC.

This internal policy supplements the Utah Coal Rules on water monitoring. Its purpose is to define existing procedures for the Division's processing of water monitoring data including the availability of records, and follow-up actions as necessary.

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1. Purpose

This internal policy supplements the Division's requirements for water monitoring. Its purpose is to describe procedures for the Division's processing of water monitoring data; including availability of records, and follow-up actions as necessary.

Implementation of this policy will ensure an established process of timely review and written findings by the Division regarding the impacts of mining on the hydrologic balance in the permit and adjacent areas under the provisions of the Coal Rules.

2. Policy

The Division of Oil, Gas and Mining, as required under the Utah Coal Mining rules, will:

- 1) Be the official repository for surface and groundwater data as required by the Utah Coal Rules, including review and analysis of water data.
- 2) Protect waters from the possible adverse impacts of coal mining.
- 3) Take corrective action, or require mitigation of adverse impacts when waters are known to be adversely impacted by coal mining, and,

3. Procedure under this policy

A. After the Permittee submits water-monitoring data to the Division as specified in the permit (electronically through the Electronic Data Input (EDI) system <http://linux1.ogm.utah.gov/cgi-bin/appx-ogm.cgi>); the Division will upload the data within 10 working days of receipt of an official upload request. Upon uploading the data, the Division will send the Permittee either a confirmation that all required data has been included with the upload, or a list of missing samples and/or parameters.

B. The water quality database contains statistical summaries for parameters at each site. The statistical summary includes: Number of samples, number used

in the calculations, average, minimum, maximum and standard deviation. Incoming water quality data is

flagged if the parameter value exceeds 2 standard deviations. This review is performed automatically as data is processed into the database using Electronic Data Input (EDI). It is the Permittee's responsibility to correct errors in the input data before official submission.

C. The Division will review incoming water quality data by the end of the following quarter to identify implied issues, evaluate alleged problems, or verify the absence of problems. Division hydrologists will use the Water Quality Memorandum form to summarize their findings of incoming data. The completed form will be filed electronically in the mine's directory on the Division's M drive, and in the internal mine files in the DOGM Public Information Center. Additionally, a link to the location of the completed Water Quality Memorandum on the Division's File Service web page will be sent to the Permittee.

D. Issues resulting from a citizen's complaint will continue to be processed as outlined in R645-400-242 and R645-400-211 et seq.

E. If an explanation is needed concerning any of the data, and the Permittee provides a satisfactory explanation to the Division, the Division will either include the explanation in the Water Quality Memorandum or prepare a separate findings document analyzing the problem and provide an explanation. The findings or memorandum will be filed in the mine's internal file in the Public Information Center and a copy will be retained in the mine's M drive directory. If the response is contained in the Water Quality Memorandum, a link to its location on the Division's File Service web page will be sent to the Permittee.

F. If a first solution or explanation is unsatisfactory, the issue may be discussed and analyzed among the Division's Hydrology Working Group (HWG) members and the Permittee. If an explanation is agreed upon within this group, then the Division will prepare a memo analyzing the problem and outlining the explanation/solution. The memo will be filed in that mine's internal file in the Public Information Center and one copy will be retained in the mine's M drive directory.

G. If no explanation is acceptable under step 3F, development of an Action Plan may be recommended, and a findings letter may be issued. The action plan will be initiated between the Permittee(s) and the Division through written agreement or through issuance of a Division Order if the Division determines a Division Order is necessary to attain prompt cooperation. A copy of the findings and an action plan, or the Division Order will be forwarded to all parties of interest.

H. The Action Plan should be developed by the Permittee and submitted to the Division. Development of the Action Plan at this step does not preclude involvement by other parties of interest.

I. The Action Plan may be forwarded to parties of interest.

J. The Division will evaluate the effectiveness of the Action Plan, report to any parties of interest, and continue work with the permittee on resolution of the situation.

4. Delegated Responsibilities

Each procedure in Part 3 has designated responsible personnel, as follows:

- A. Permittee/ Division Hydrologist
- B. Permittee/ Database
- C. Division Hydrologist/ Engineering Tech
- D. Division Hydrologist/ Permittee/ Inspector / Engineering Tech
- E. Permittee/ Division Hydrologist/ Inspector/ Permit Supervisor/ Engineering Tech
- F. Permittee/ Division Hydrologist/ Inspector/ Permit Supervisor/ Engineering Tech
- G. Division Hydrologist/ Inspector/ Permit Supervisor/ Associate Director/ Director / Permittee
- H. Permittee/ Division Hydrologist/ Inspector/ Permit Supervisor
- I. Permit Supervisor/ Associate Director
- J. Division Hydrologist/ Inspector/ Permit Supervisor

5. Reporting Requirements

- 3.A: Upload report emailed to Permittee, Engineering Tech to PIC Internal File and M drive.
- 3.C: Link to Water Quality Memorandum emailed to Permittee, to PIC Internal File and M drive.
- 3.E: Findings or link to Water Quality Memorandum to Permittee, PIC Internal File and M drive.
- 3.F: Findings to Permittee, PIC Internal File and M drive.
- 3.G: Findings or Division Order to parties of interest (including Permittee), PIC Internal File and M drive.
- 3.H: Action Plan may be received from Permittee, to PIC Incoming File and M drive.
- 3.I: Action Plan may be forwarded to all parties of interest.
- 3.J: The Division will evaluate the effectiveness of any Action Plan and will report findings to all parties of interest.

6. References

R645 rules

7. Effect on Other Documents

None

8. Division Contact/Work Group

Hydrology Working Group: James Smith, Daron Haddock, Pete Hess, Dave Darby, Steve Christensen, Dana Dean, Steve Demczak, Karl Houskeeper.

9. Key Words

groundwater monitoring, hydrology, hydrologic balance, surface water monitoring, electronic transfer, Probable Hydrologic Consequences, Cumulative Hydrologic Impact Assessment (CHIA), Probable Hydrologic Consequences (PHC), EDI.

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10. Appendices

APPENDIX A: Regulatory Basis

APPENDIX B: Definitions

APPENDIX C: Water Quality Memorandum Form

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APPENDIX A

Regulatory Basis

R645-103-433.200 Records...“The Division will make the record available to the public for inspection free of charge and for copying at a reasonable cost during normal hours at the main office of the Division.

R645-301-731. General requirements ...“The plan will be specific to the local hydrologic conditions. It will contain the steps to be taken during coal mining and reclamation operations through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area; to support approved postmining land use in accordance with the terms and conditions of the approved permit and performance standards of R645-301-750; to comply with the Clean Water Act (33U.S.C. 1251 et seq) and to meet applicable federal and Utah water laws and regulations...”

R645-301-731.211 ...“The plan will provide for the monitoring of parameters that relate to the suitability of groundwater for current and approved postmining land uses and to the objectives of protection of the hydrologic balance set fourth in R 645-301-731. It will identify the quantity and quality parameters to be monitored, sample frequency and site locations...”

R645-301-731.212...“Groundwater will be monitored and data will be submitted at least every three months for each monitoring location...”

R645-301-731.221...“The permit application will include surface-water monitoring plan”...“The plan will provide for the monitoring of parameters that relate to the suitability of the surface waters for current and post-mining land uses and to the objectives for the protection of the hydrologic balance...”

R645-301-731.223...“Surface water monitoring data will be submitted at least every three months for each monitoring location...”

R645-300-122.200...“Written objections to an application for a permit, significant revision to a permit under R645-303-220, or renewal of a permit under R645-303-230 may be submitted to

the Division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any federal, state, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by R645-300-121...”

R645-303-233.200...“Burden of Proof. In the determination of whether to approve or deny a renewal of a permit, the burden of proof will be on the opponents of renewal...”

R645-301-731.800...“Water Rights and Replacement. Any person who conducts SURFACE COAL MINING AND RECLAMATION ACTIVITIES will replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in R645-301-624.100 through R645-301-624.200, R645-301-625, R645-301-626, R645-301-723 through R645-301-724.300, R645-301-724.500, R645-301-725 through R645-301-731, and R645-301-731.210 through R645-301-731.223 will be used to determine the extent of the impact of mining upon groundwater and surface water...”

R645-400-211...“A citizen may request a Division inspection under UCA 40-10-22 by furnishing to the Division a signed, written statement (or an oral report followed by a signed, written statement) giving the Division reason to believe that a violation of the State Program or any applicable permit or exploration approval has occurred, and including a phone number and address where the citizen can be contacted...”

R645-400-212...“The identity of any person supplying information to the Division relating to a possible violation or imminent danger or harm will remain confidential with the Division if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under Utah or federal law...”

R645-400-213... "If a Division inspection is conducted as a result of information provided to the Division by a citizen as described in R645-400-211, the citizen will be notified as far in advance as practicable when the inspection is to occur and will be allowed to accompany the authorized representative of the Division during the inspection. Such person has a right of entry to, upon, and through the coal exploration or coal mining and reclamation operation about which he or she provided information, but only if he or she is in the presence of and is under control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant. All citizens so visiting mine sites are required to comply with applicable MSHA safety standards..."

or disclosure is required under Utah or federal law..."

R645-400-214... "Within 10 days of the Division inspection or, if there is no inspection within 15 days of receipt of the citizen's written statement, the Division will send the citizen the following:

- 214.100. If an inspection was made, a description of the enforcement action taken, which may consist of copies of the Division inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;
- 214.200. If no Division inspection was conducted, an explanation of the reason why; and
- 214.300. An explanation of the citizen's right, if any, to informal review of the action or inaction of the Division under R645-400-240."

R645-400-215... "The Division will give copies of all materials in R645-400-214 within the time limits specified in that Rule to the person alleged to be in violation, except that the name of the citizen will be removed unless disclosure of the citizen's identity is permitted under R645-400-212..."

R645-400-242... "The Director will conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation will also be given a copy of the results of the review, except that the name of the citizen will not be disclosed unless confidentiality has been waived

APPENDIX B

Definitions (R645-100-200)

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations including probable impacts from underground workings.

"Hydrologic Balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Permit Area" means the area of land, included on the approved map submitted by the operator with his or her application, which will include the area on which the operator proposes to conduct coal mining and reclamation operations under the approved permit, including all disturbed areas.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas;

any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar, as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

B. Definitions for purposes of this Directive

"Action Plan" is a written statement to conduct activities to investigate and resolve the hydrologic issue identified. An Action Plan may include but is not limited to the following: study, investigation, increased or additional monitoring, and mitigation.

"Parties of Interest" as related to this guideline means one having a legal right and whose right may be, or has been, directly affected.

C. Records Availability

Water monitoring data is classified as public information and is available for review during regular working hours at the Division of Oil, Gas, & Mining Salt Lake Office Public Information Center.

APPENDIX C

Water Quality Memorandum

TO: Internal File

THRU: Permit Supervisor

FROM:

RE: Year, Quarter Water Monitoring, Company, Mine, Permit & Tracking #

Briefly mention the current status of the mine (operational, idle, in reclamation, etc.). Identify the table from which you based your conclusion. Mention the tables in the MRP that show the mines water monitoring schedule.

1. Was data submitted for all of the MRP required sites? YES ☐ NO ☐

Identify the monitoring requirements for each monitoring site (this information can be carried over from one report to the next unless the monitoring requirements change). Then, provide a statement whether the information was submitted or not.

Springs

Streams

Wells

UPDES

2. Were all required parameters reported for each site?

YES ☐ NO ☐

3. Were any irregularities found in the data? (Is there a trend?) (See attached graph)

YES ☐ NO ☐

4. On what date does the MRP require a five-year re-sampling of baseline water data.

5. Based on your review, what further actions, if any, do you recommend?

Does the Mine Operator need to submit more information to fulfill this quarter's monitoring requirements?

YES ☐ NO ☐

6. Follow-up from last quarter, if necessary.

Did the Mine Operator submit all the missing and/or irregular data (datum)?